IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 10548 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

P A ATHMA NATHAN GENERAL MANAGER (AMRAWADI ZONE

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 10548 of 2003

MR KB PUJARA for Petitioner No. 1-2

MS. MITA PANCHAL, APP for Respondent No. 1

MR JK PARMAR for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 25/08/2004

ORAL JUDGEMENT

By filing instant petition under Article 226/227 of the Constitution of India and under Section 482 of the

Code of Criminal Procedure ('the Code' for short), petitioners have prayed to quash and set aside the proceedings of Criminal Case No. 5512 of 2003 in the Court of learned Metropolitan Magistrate Court No.7, Ahmedabad and order of issuance of process passed therein on 28.11.2003.

2. Criminal Case No. 5512 of 2003 has been instituted by respondent No.2 - original complainant against the present petitioners for alleged commission of the offence under Sections 323, 394(b) and 114 of the IPC. In the said complaint, learned Magistrate has issued process.

3. At the time of hearing of this petition, Mr. J.K.Parmar, learned advocate of respondent No.2 original complainant states that the offence alleged in the complaint is of summons trial and the complainant is not desirous of prosecuting the said complaint and wants to withdraw the same in exercise of the powers vested under Section 257 of the Code. He further states that the complainant has already filed pursis of withdrawal of the said complaint in the Court of learned Metropolitan Magistrate Court No.7, Ahmedabad. The learned Magistrate has not passed any order in view of the pendency of this petition and granting of stay of further proceedings by this Court. Mr.K.B.Pujara, learned advocate of the petitioners state that since the complainant has already filed pursis for withdrawal of Criminal Case No. 5512 of 2003, he does not press for this petition. He, therefore urged to pass appropriate orders in view of the statement made by Mr.Parmar, learned advocate of respondent No.2 original complainant.

4. Ms. Mita Panchal, learned APP appearing on behalf of respondent No.1 State of Gujarat states that since the offence alleged in the complaint is of summons trial, the complainant can withdraw the complaint by virtue of powers vested under Section 257 of the Code. She, therefore, urged to pass appropriate orders.

5. Having considered the submissions made by the learned advocates appearing for the parties and on the facts and in the circumstances emerging from the record of the case, since the complainant has already filed pursis for withdrawal of the said complaint under Section 257 of the Code, this petition for quashing of the said complaint now does not survive and therefore, the same is deserved to be disposed of accordingly. Hence, this petition is disposed of with a direction that the learned Magistrate shall now accept the pursis filed by the

complainant seeking withdrawal of the complaint, by passing appropriate orders of withdrawal of the complaint. Rule is discharged. Interim relief granted at the time of issuance of rule shall stand vacated.

6. Direct service to respondent No.2 is permitted. Registry to send the writ of this order to the learned Metropolitan Magistrate Court No.7, Ahmedabad forthwith.

(A.M.Kapadia,J)
Jayanti*